



STATE OF NEW YORK

**UNEMPLOYMENT INSURANCE APPEAL BOARD**

PO Box 15126

Albany NY 12212-5126

**DECISION OF THE BOARD**

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Mailed and Filed: NOVEMBER 16, 2022

IN THE MATTER OF:

Appeal Board No. 625102

PRESENT: RANDALL T. DOUGLAS, MEMBER

In Appeal Board Nos. 625100, 625101 and 625102, the claimant appeals from the decisions of the Administrative Law Judge filed July 27, 2022, which sustained the initial determination holding the claimant ineligible to receive benefits, effective June 15, 2020 through April 11, 2021, on the basis that the claimant was not totally unemployed and/or had earnings over the statutory limitation as modified so that, within this period, the claimant was eligible to receive benefits in the week ending June 21, 2020, and was ineligible to receive benefits for three effective days in the week ending August 2, 2020 and for two effective days in each of the weeks ending July 5, 2020 and August 16, 2020 and one effective day in the week ending July 19, 2020; sustained the initial determination charging the claimant with an overpayment of \$4,158 in regular unemployment insurance benefits recoverable pursuant to Labor Law §

597 (4), \$1,008 in extended benefits recoverable pursuant to Labor Law § 597

(4), \$3,900 in Federal Pandemic Unemployment Compensation (FPUC) benefits recoverable pursuant to Section 2104 (f)(2) of the Coronavirus Aid, Relief and Economic Security (CARES) Act of 2020, \$12,096 in Pandemic Emergency Unemployment Compensation (PEUC)

benefits recoverable pursuant to Section 2107 (e)(2) of the Coronavirus Aid, Relief and Economic Security (CARES) Act of 2020, and \$600 in Lost Wages Assistance (LWA) benefits recoverable pursuant to 44 CFR Sec. 206.120 (f)(5) as modified in accordance with the decision and referred the amount of the overpayments to the Department of Labor for recalculation; and sustained the initial determination reducing the claimant's right to receive future benefits

by 112 effective days and charging a civil penalty of \$3,174.30 on the basis that the claimant made willful misrepresentations to obtain benefits as modified in accordance with the decision and referred the amounts of the effective day penalty and the civil penalty to the Department of Labor for recalculation.

At the combined telephone conference hearing before the Administrative Law Judge, all parties were accorded a full opportunity to be heard and testimony was taken. There were appearances on behalf of the claimant and the employer.

Based on the record and testimony in this case, the Board makes the following

**FINDINGS OF FACT:** Since 2007, the claimant has worked for this employer school district in various capacities related to transportation. In addition to working for this employer, the claimant worked as a craftsman for a jewelry business from 1999 until he was laid off on March 20, 2020 due to COVID-19. The owner advised the claimant to file a claim for unemployment insurance benefits and helped him do so in English. The claimant filed a claim for benefits, effective March 16, 2020.

He worked one day in each of the weeks ending July 5, 2020 and July 19, 2021; two days in each of the weeks ending June 28, 2020, August 2, 2020, August 9, 2020, and August 16, 2020; and three days in the week ending July 26, 2020. From the week ending August 23, 2020 through the week ending April 11, 2021, the claimant worked four or more days each week and earned over \$504 each week.

When he certified for benefits for each of the weeks ending June 21, 2020 through August 16, 2020, he was asked how many days he worked that week. He stated he worked zero days. When the claimant certified for benefits for each of the weeks ending August 23, 2020 through April 11, 2021, he was asked whether he earned more than \$504. He stated he did not earn more than \$504. Neither of these questions referred to a specific employer. As a result, the claimant received \$4,158 in regular unemployment insurance benefits; \$1,008 in extended benefits; \$3,900 in FPUC benefits; \$12,096 in PEUC benefits, and \$600 in LWA benefits.

**OPINION:** The Administrative Law Judge decisions held that the claimant was totally unemployed in the week ending June 21, 2020 and did not make a factually false statement or a willful misrepresentation during that week, and that he worked on only one day in the week ending July 19, 2020 and on two

days in the week ending August 16, 2020 and did not earn more than \$504 that week. There was no appeal from that portion of the decisions. We are bound by those findings in the decisions.

The credible evidence establishes that the claimant worked two days in the week ending June 28, 2020; one day in the week ending July 5, 2020; one day in the week ending July 19, 2020; three days in the week ending July 26, 2020, and two days in the weeks ending August 2, 2020, August 9, 2020 and August 16, 2020. The evidence further establishes that beginning with the week ending August 23, 2020 through the week ending April 11, 2021, he worked four or more days and earned more the \$504 each week. The claimant admitted the employer's records were accurate and that there were weeks in which he earned more the \$504. Accordingly, we conclude that the claimant was not totally unemployed and/or had earnings over the statutory limitation. As he was ineligible to receive benefits, he was overpaid regular, extended and federal benefits. The federal benefits are recoverable per federal law. The amounts of the recoverable federal overpayments are referred back to the Department of Labor for recalculation.

Regarding the regular and extended benefits, the claimant's certifications that he worked zero days and his subsequent certifications that he earned less than \$504 per week are factually false statements. However, the initial determination of recoverable overpayments and willful misrepresentation omitted the certification for the week ending January 10, 2021. For this reason, the regular and/or extended benefits received during this week are non-recoverable. The remainder of the regular and extended benefits are recoverable. The amounts of the regular and extended benefits are referred back to the Department of Labor for recalculation.

With the exception of the week ending January 10, 2021, the claimant's certifications constitute willful misrepresentations, as he was aware that he worked and that he earned over \$504. Accordingly, we further conclude that he was properly assessed forfeit and civil penalties. The forfeiture and civil penalties are referred to the Department of Labor for recalculation.

**DECISION:** The decisions of the Administrative Law Judge are modified as follows and, as so modified, are affirmed.

In Appeal Board No. 625100, the initial determination, holding the claimant ineligible to receive benefits, effective June 15, 2020 through April 11,

2021, on the basis that the claimant was not totally unemployed and/or had earnings over the statutory limitation for stated weeks and for stated numbers of days in stated weeks, is modified within this period so that as to the following three weeks, the claimant is totally unemployed for the week ending June 21, 2020, is totally unemployed on two days in the week ending August 16, 2020, and is totally unemployed on one day in the week ending July 19, 2020, and, as so modified, is sustained.

In Appeal Board No. 625101, the initial determination, charging the claimant with an overpayment of \$4,158 in regular unemployment insurance benefits recoverable pursuant to Labor Law § 597 (4), \$1,008 in extended benefits

recoverable pursuant to Labor Law § 597 (4), \$3,900 in Federal Pandemic

Unemployment Compensation (FPUC) benefits recoverable pursuant to Section 2104 (f)(2) of the Coronavirus Aid, Relief and Economic Security (CARES) Act of 2020, \$12,096 in Pandemic Emergency Unemployment Compensation (PEUC) benefits recoverable pursuant to Section 2107 (e)(2) of the Coronavirus Aid, Relief and Economic

Security (CARES) Act of 2020, and \$600 in Lost Wages Assistance (LWA) benefits recoverable pursuant to 44 CFR Sec. 206.120 (f)(5), is modified in accordance with this decision, and, as so modified, is sustained.

In Appeal Board No. 625102, the initial determination, reducing the claimant's right to receive future benefits by 112 effective days and charging a civil penalty of \$3,174.30 on the basis that the claimant made willful misrepresentations to obtain benefits, is modified in accordance with this decision, and, as so modified, is sustained.

The amounts of the recoverable overpayments, the forfeit penalty and the civil penalty are referred to the Department of Labor for recalculation in accordance with this decision.

The claimant is denied benefits with respect to the issues decided herein.

RANDALL T. DOUGLAS, MEMBER